

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 597 w/CS Canaveral Port District  
**SPONSOR(S):** Allen  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Sheheane</u>	<u>Highsmith-Smith</u>
2) <u>Local Government &amp; Veterans' Affairs</u>	<u>18 Y, 0 N</u>	<u>Sheheane</u>	<u>Highsmith-Smith</u>
3) <u>Judiciary</u>	<u>18 Y, 0 N w/CS</u>	<u>Jaroslav</u>	<u>Havlicak</u>
4) <u>Finance &amp; Tax</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

This bill codifies all prior special acts relating to the Canaveral Port District into a single act. The District is currently authorized to levy an ad valorem tax on all real and personal property in the District not to exceed 3 mills. This bill does not change that provision. The bill provides a change from the appointment authority of the Governor to an elected board. Commissioners are elected for four year terms.

The bill provides a new declaration that all powers conferred upon the District constitute and are a public purpose and are for the welfare and benefit of the District and its inhabitants.

According to the Economic Impact Statement, the current salary for five commissioners is \$7,800.00 yearly. This bill proposes increasing that to \$9,550.00 yearly. This results in estimated annual cost of \$8,750.00 excluding fringe benefits and employer social security contribution.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0597e.ju.doc  
**DATE:** April 14, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

This bill codifies all prior special acts relating to the Canaveral Port District into a single act. The District is currently authorized to levy an ad valorem tax on all real and personal property in the District not to exceed 3 mills. This bill does not change that provision. The bill provides a change from the appointment authority of the Governor to an elected board. Commissioners are elected for four year terms.

The bill declares that all powers conferred upon the District constitute and are a public purpose and are for the welfare and benefit of the District and its inhabitants. This public purpose declaration is necessary to engage in certain activities allowable pursuant to chapter 253, F.S. Any lands acquired pursuant to chapter 253, F.S., must serve the public interest.

#### **Codification**

Codification is the process of bringing a special district's charter up-to-date by consolidating it in one place. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in ss. 189.429 and 191.015, F.S. The 1998 Legislature subsequently amended both sections of statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997, memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended s. 189.429, F.S., to provide that reenactment of existing law pursuant to s. 189.429, F.S.: (1) shall not be construed to grant additional authority nor to supercede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

## **Status Statement Language**

Section 189.404(5), F.S., provides that after October 1, 1997, the charter of any newly created special district shall contain and, as practical, the charter of a preexisting special district shall be amended to contain, a reference to the status of the special district as dependent or independent. When necessary, the status statement shall be amended to conform to the Department of Community Affairs' determination or declaratory statement regarding the status of the district.

### **C. SECTION DIRECTORY:**

**Section 1:** Provides that this bill constitutes the codification of all special acts relating to the Canaveral Port District.

**Section 2:** States that all laws prior to this act are codified, reenacted, amended, and repealed as provided.

**Section 3:** The charter is re-created and reenacted to read:

#### **Article I: Creation and Status**

Section 1: Maintains a created and established port district in Brevard County and provides that it is an independent district. This section also describes the boundaries of the District.

Section 2: States that the District is divided into five Commissioner Port Districts and is defined as follows:

(a) Defines the boundaries of District 1.

(b) Defines the boundaries of District 2.

(c) Defines the boundaries of District 3.

(d) Defines the boundaries of District 4.

(e) Defines the boundaries of District 5.

(f) States that the aforesaid boundary lines and referenced points are the same as situated and located on the date this provision becomes law, except that the shoreline of the Atlantic Ocean and channel centerlines of the waterways in said descriptions shall be as the same exists in fact from time to time.

Section 3: Maintains that every ten years the District shall be divided into five (5) Commissioner Port Districts of contiguous territory equal in population. This section also describes the process by which the division will take place.

Section 4: Provides new language stating that the District's charter may only be amended by special act of the Legislature.

#### **Article II: Definitions:**

Section 1: Defines "Harbor District", "Port District", "Harbor Commissioners", "Port Commissioners", "Port Authority", "Port Canaveral" and "Port".

#### **Article III: Governing Authority**

Section 1: Describes the governing authority of the Canaveral Port District.

**Article IV:** General Grant of Powers: The governing body shall have the following powers:

Section 1: To acquire property as the governing board shall deem necessary for the purposes of the District.

Section 2: To inspect any commodities and cargo shipped through the Port.

Section 3: To exercise control over Port Canaveral and any parts thereof.

Section 4: To fix uniform rates upon all harbor facilities located within the Port District.

Section 5: To exercise police powers as necessary for effective control of the District.

Section 6: To grant franchises to any person, firm, or corporation, to construct, establish, maintain, improve, and to manage jetties, piers, docks, wharves, causeways, and other structures.

Section 7: To enter into contract with any common carrier or successor for the improvement of the District.

Section 8: To levy, assess, collect, and enforce ad valorem taxes upon all real and personal property in the District for the purposes of the District. The tax may not exceed 3 mills on the dollar in any one year.

Section 9: To create offices as determined necessary by the governing board of the District.

Section 10: To make rules consistent with the Constitution and laws of the state of Florida and the Constitution of the United States of America.

Section 11: To make rules and regulations governing the movement of water crafts within the Port.

Section 12: To establish fines and penalties for violation of regulations of the Port.

Section 13: To enter into contract with the government of the United States Government which may be necessary for the purposes of the Port.

Section 14: To exercise the right of eminent domain.

(a) States the procedure of the Port Authority in a condemnation proceeding.

(b) States that the Port Authority shall defray the cost of proceedings necessary to effectuate the purposes of this section, providing that the Port Authority shall not be held liable for costs brought forth by plaintiff.

Section 15: To borrow money as herein provided.

Section 16:

(a) To deliver all contracts, deeds, mortgages, promissory notes, and all other instruments necessary to carry out the powers herein.

(b) Have the authority, by a majority vote, to lease the lands, personal properties, and facilities for a period not to exceed ten years or to encumber personal properties and facilities not more than \$10,000 and for a period not to exceed 5 years.

(c) Any lease of the lands, personal properties, or facilities of the Port Authority for a period of more than 10 years, or facilities of the Port Authority for more than \$10,000 and for a period of more than 5 years shall be first advertised in a newspaper of general circulation.

Section 17: To regulate the speed and operation of any water craft at any time while using the Port.

Section 18: To appoint a Pilot Commission consisting of three or more members as the Port Authority may determine.

Section 19:

(a) The Authority shall have the power to borrow money from any state or federal agency, private party, and to secure payment by revenue certificates or revenue bonds.

(b) Authorizes the Port to secure revenue certificates by a pledge of the revenues of the port project.

(c) States that the issuance of revenue bonds shall be authorized by resolution of the Port Authority. This section also provides detail to the revenue bonds.

Section 20:

(a) Further authorizes the Port Authority to issue revenue certificates or revenue bonds authorized in section 19 of this act supported by an ad valorem tax.

(b) States that the Port Authority must authorize, by resolution, the said revenue certificates before issuance. This section also provides further explanation of the processes for the required resolution, including a required vote by the electors residing in the District before revenue certificates may be issued.

(c) States that all qualified electors residing in the District shall be entitled to vote in said election as the election shall be in accordance with general statute. This section also provides further detail relating to the election.

(d) States that the Authority has the power to levy and enforce an ad valorem tax upon all taxable property within the District.

(e) States that the Authority is authorized to borrow money at an interest rate not to exceed 7.5 percent per annum and maturity date not to exceed 1 year from any bank or party and provides current language relating to borrowing money.

Section 21:

(a) Provides current language describing the manner in which the Port Authority shall exercise the levying, assessing, and collecting of any ad valorem tax.

(b) States that the Port Authority is required to determine by resolution, the total amount to be raised by ad valorem taxes levied upon all taxable property within the District and describes further detail relating to the ad valorem tax, including the limit of 3 mills on the dollar in any one year.

(c) States that the Authority shall provide a certified copy of the tax resolution to the Board of County Commissioners and the Chief Financial Officer of the State of Florida. This section also provides further detail to the resolution.

(d) States that this act shall be the full authority for the issuance of any revenue certificates and provides further detail to the revenue certificates.

(e) This section provides current language which repeals sections 193.321 through 193.327, F.S., 1967, as the power and authority to the Canaveral Port Authority in relation to ad valorem taxes.

Section 22

(a) Provides current language relating to the governing board providing insurance for employees and officers of the Port.

(b) States that the governing board is authorized to pay all or any portion of premiums for group insurance.

Section 23:

(a) Repeals section 253.126, F.S., is repealed as to the Canaveral Port Authority.

(b) States that the Port Authority is authorized to establish bulkhead lines, authorize dredging and filling, and have jurisdiction under chapter 253, F.S.

(c) States that the Port Authority is to comply with chapter 253, F.S.

Section 24: This section provides current language authorizing the Canaveral Port Authority to comprehensively plan for the use of lands, resources, and waters under its jurisdiction.

**Article V: Port Commissioners:**

Section 1: Provides current language relating to the governing authority of the Port and sets out four year terms for commissioners; provides for staggering of terms; establishes date upon which each commissioner's term begins.

Section 2:

(a) States that each Commissioner of the District must be a qualified elector and resident of the District.

(b) Nomination of the candidates shall be made at primary elections of the District.

(c) States that the candidates shall pay a filing fee to the Clerk of the Board of County Commissioners.

(d) States that elections of candidates shall be at general elections as provided by general laws of Florida.

Section 3: Provides current language relating to vacancies of the governing board members of the Port.

Section 4: Describes the oath and surety bond to be made by the Port Commissioners.

Section 5: States that the Port Commissioners shall select a Chair, Vice-Chair, Secretary, and Treasurer and describes the duties of the officers.

Section 6: Provides new language describing the salary allowance of each Port Commissioner.

Section 7: States that all meetings of the Port Commissioners shall be open to the public.

Section 8: States the requirement for all expense accounts of the Port Commissioners and employees shall be itemized in writing and submitted to the Port Authority in session.

**Article VI:** Additional Powers:

Section 1: States that the Port Authority shall have the power to impose a franchise or excise tax upon businesses operating under any franchise granted by the Port Authority.

Section 2: States that the Port Authority may adopt zoning plans for the purposes of the Port.

**Article VII:** Personnel:

Section 1: States that the Port Authority is authorized to appoint a Port Manager.

Section 2: Describes the duties of the Port Manager.

Section 3: The Port Manager shall receive such compensation as may be agreed.

Section 4: Travel authorized by the Port Authority shall be reimbursed with the following provisions:

(a) All official travel performed within the state shall be reimbursable in accordance with section 112.061, F.S.

(b) Official travel outside the state, but within the United States shall be reimbursable in accordance with section 112.061, F.S. This section also provides exceptions.

(c) Official travel outside the United States shall be reimbursable in accordance with section 112.061, F.S. This section also provides percentages for the maximum daily rate.

**Article VIII:** Levy of Taxes:

Section 1: The Port Authority shall not, during any one year, levy a tax in any greater sum than shall be necessary for the following purposes:

(a) A tax exceeding 3 mills on the dollar.

(b) A tax for the purpose of paying revenue certificates and revenue bonds outstanding.

Section 2: States that the Port Authority shall prepare and adopt a financial budget for the ensuing fiscal year.

Section 3: All revenues received by the Port Authority from the operation of Port Canaveral, other than specifically pledged, shall be paid to the Administration Fund.

**Article IX:** Prohibitions:

Sections 1: States that no officer, member, or employee of the Port Authority may purchase supplies from any firm or corporation in which he or she has an interest.

**Article X:** Notification of Claims:

Section 1: Every claim against the Port Authority shall be filed, signed by the claimant or his or her authorized agent within three months after the claim shall become due.

**Article XI: Statute of Limitations:**

Section 1: States that no statute brought forth by the Legislature before or after this act fixing the time in which action shall be brought, known as the "Statute of Limitations" shall apply to any action prosecuted by the Port Authority or the Canaveral Port District.

**Article XII: Exemption From Taxation:**

Section 1: All property held by the Port Authority shall be exempt from all taxation.

**Article XIII: Exemption From Judgment Liens:**

Section 1: No judgment or decree tendered against the Canaveral Port Authority shall be a lien upon the property held by the Port Authority.

**Article XIV: Appeals Bond:**

Section 1: The Port Authority shall not be required to file any bond required by law to file in an attachment or in the prosecution of an appeal or writ of error.

**Article XV: Removal of Port Commissioners by Governor:**

Section 1: States that if a Commissioner of the Port is guilty of a charge then he or she will be removed by the Governor.

**Article XVI: Inspection of Books and Records:**

Section 1: States that the records of the Port shall be available at all reasonable hours as provided by law.

Section 2: States that the books and public records of the Port Authority shall be audited by the State Auditing Department.

Section 3: The fiscal year of the Port Authority shall begin October 1 of each year and end September 30 of each year.

**Article XVII: Contracts; Competition**

Section 1: No contract shall be let by the Port Authority for any construction, improvement, or repair relating to the Port. This section also describes the provisions of the contract process for the Port.

Section 2: In the event that the cost of the contract under section 1 is greater than \$5,000 but less than \$15,000, then the Port shall do the following:

- (a) Obtain at least three telephonic bid offers to perform such work or furnish such property from at least three independent persons or businesses.
- (b) Make a record of the offers.
- (c) Award the contract to the lowest bidder.

Section 3: In lieu of the competitive bid requirements set forth in sections 1 and 2 of this article, the Port Authority may utilize purchase agreements or contracts of government agencies.

**Article XVIII: Lease and Encumbrances:**

Section 1: States that no lease of the Port Authority shall exceed an initial period of 99 years. This section also provides details relating to this provision.

Section 2: Maintains that the Port Authority must give at least three days notice of any election by a publication in a newspaper published within the District for at least 30 days.

Section 3: Said notice shall state the description of the lands to be leased and the sum to be received by the Port Authority.

Section 4: All qualified electors in the District shall be entitled to vote in elections relating to the Port Authority.

Section 5: It shall be the duty of the Port Authority to prepare a sufficient number of ballots for said elections.

Section 6: This section provides the format for said ballots of elections.

Section 7: If a majority of the electors cast their vote in favor of the lease, then the Port Authority shall deliver.

**Article XIX: Severability Clause:**

Section 1: Provides for severability.

**Article XX: Declaration of Public Purpose:**

Section 1: This new section declares that the powers conferred upon the district in this act are for proper public purposes and for the welfare and benefit of the District and its inhabitants.

Section 2: The provisions of this act shall be liberally construed for the purposes specified.

**Section 4:** Repeals all prior special acts relating to the Canaveral Port District.

**Section 5:** Provides an effective date of upon becoming law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 24, 2003

WHERE? *Florida Today*, Brevard County.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Article XII, section 1 of the charter provides a blanket exemption from taxation and Section 5 of this bill provides that all law inconsistent with the charter shall yield to it. Such sweeping statements of supremacy over general law would require the Legislature to specifically amend the charter if it ever wanted to subject the district to general law or taxation of a general nature.

### IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

On March 20, 2003, the House Subcommittee on Local Affairs recommended this bill favorably without amendment.

On March 27, 2003, the House Committee on Local Government & Veterans' Affairs reported this bill favorably without amendment.

On April 9, 2003, the House Committee on Judiciary adopted one amendment to this bill. This amendment eliminates language providing that the District's charter prevails over any conflicting provision of law. The Committee then reported this bill favorably with a committee substitute.